

March 20, 2007

Regulatory Branch  
File No: 2005-44970

Mr. Craig Johler  
Environmental Operations, Inc.  
1530 South Second Street, Suite 200  
Saint Louis, Missouri 63104-4500

Dear Mr. Johler:

This document references your request for our jurisdictional determination of two ponds, preliminarily delineated as waters of the United States, on the National Imagery and Mapping Agency (NIMA) property. Each of the ponds is approximately 1.5 acres in size. The Port of St. Louis, the future owner of the NIMA site, and the MDNR have entered into an Abatement Order on Consent (AOC) governing remediation of the NIMA property using risk-based corrective standards and requirements of the MDNR under the Missouri Brownsfields/Voluntary Cleanup Program. The remediation activities include emptying and backfilling the two ponds. Sampling the contaminant levels from the pond water and underlying sediments may obviate additional remediation requirements. The ponds are located off of 8900 South Broadway, in Lemay, St. Louis County, Missouri.

Sections 404 of the Clean Water Act assigns responsibility to the Secretary of the Army to administer a permit program to regulate the excavation or placements of dredged or fill material in waters of the United States. The excavation or placement of any dredged or fill material in waters of the United States below ordinary high water elevation or in wetlands, must be authorized by a Section 404 permit.

The ponds, which are located side by side, are surrounded by previously used buildings, roadways and other past development features. No jurisdictional waterway supplies water to the ponds, nor were the ponds created within a jurisdictional waterway. There is no natural hydrological connection between the pond and nearest jurisdictional waterway, which is the River Des Peres. Although each pond contains shallow water habitat and a narrow band of wetlands along their perimeter, they are considered isolated. Therefore, according to the new supreme Court ruling pertaining to the scope of regulatory jurisdiction under the Clean Water Act (CWA), known as the Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (January 9, 2001) (SWANCC), neither pond falls under the jurisdiction of Section 404 of the (CWA). No permit is required to drain and backfill either of the ponds.

You are reminded that this determination is based on submitted plans. Variations from these plans may constitute a violation of Federal law and may result in the revocation of the determination.

This letter contains an **approved jurisdictional determination** for your project. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Mississippi Valley Division Office at the following address:

Appeals Officer  
CEMVD-PD-KM (Mississippi Valley Division)  
P.O. Box 80  
Vicksburg, MS 39181-0080  
Phone: (601) 634-5821 Fax: (601) 634-5816

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **May 20, 2007**.

The **jurisdictional determination** is valid for a period of five years from the date of this letter unless new information warrants revision of this determination before the expiration date.

If you have any questions, please contact me at (314) 331-8583. Please include the identification number 2005-44970 with any future inquiries regarding this project.

Sincerely,

Charles Frerker, PM  
Rivers Evaluation Section

Enclosure